



7020-02

INTERNATIONAL TRADE COMMISSION

Certain Network Devices, Related Software and Components Thereof (I)

[Investigation No. 337-TA-944 (Modification Proceeding)]

Institution of Modification Proceeding; Request for Briefing

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a modification proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the investigation on January 27, 2015, based on a complaint filed on behalf of Cisco Systems, Inc. ("Cisco") of San Jose, California. 80 *FR* 4314-15 (Jan. 27, 2015). The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale

within the United States after importation of certain network devices, related software and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,162,537 (“the ’537 patent”); U.S. Patent No. 8,356,296; U.S. Patent No. 7,290,164 (“the ’164 patent”); U.S. Patent No. 7,340,597; U.S. Patent No. 6,741,592 (“the ’592 patent”); and U.S. Patent No. 7,200,145, and alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complaint named Arista Networks, Inc. (“Arista”) of Santa Clara, California as the respondent. A Commission investigative attorney (“OUII”) is participating in the investigation.

On June 23, 2016, the Commission found that a Section 337 violation had occurred as to the ’537, ’592, and ’145 patents and therefore issued a limited exclusion order and a cease and desist order against Arista. 81 *FR* 42375-76 (June 29, 2016).

On August 28, 2018, Cisco filed a petition pursuant to Commission Rule 210.76 to suspend the remedial orders issued in this investigation based on a settlement agreement between Cisco and Arista. Neither Arista nor OUII filed a response.

On September 21, 2018, the Commission extended the time for determining whether to institute the requested proceeding until October 22, 2018.

The Commission has determined that Cisco’s request complies with the requirements for institution of a modification proceeding under Commission Rule 210.76 due to changed circumstances. Accordingly, the Commission has determined to institute a modification proceeding. The Commission sets the target date for completion of the modification proceeding as 90 days after publication of this notice in the Federal Register.

The Commission requests that the parties brief the following issue:

1. Given the parties’ representations (1) that they have entered into a binding settlement wherein Arista must “maintain the modifications it has made to its current products for

sale in the United States,” Pet. at 1, Exh. A at 9; and (2) that “Commission Rule 210.76 permits modifications of Commission remedial orders” based on settlement, Pet. at 2, please discuss your position regarding modification of the existing remedial orders to expressly exempt the Arista redesigned products from the scope of the remedial orders.

The parties are requested to brief the discrete issue identified above, with reference to the applicable law. The parties are requested to submit proposed remedial orders, which exempt the redesigned products, for the Commission’s consideration.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. The written submissions and proposed remedial orders must be filed no later than close of business on November 1, 2018. Reply submissions must be filed no later than the close of business on November 8, 2018 . Opening submissions are limited to 10 pages exclusive of draft orders. Reply submissions are limited to 7 pages. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) Of the Commission’s Rules of Practice and Procedure (19 CFR 2.10.4(f)). Submissions should refer to the investigation number (“Inv. No. 337-TA-944”) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is

properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,¹ solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 22, 2018.

Lisa Barton,
Secretary to the Commission.

¹ All contract personnel will sign appropriate nondisclosure agreements.

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